

1 Evan Selik (SBN 251039)
2 Christine Zaouk (SBN 251355)
3 McCATHERN LLP
4 523 West Sixth Street, Suite 830
5 Los Angeles, California 90014
6 (213) 225-6150 / Fax (213) 225-6151
7 eselik@mccathernlaw.com
8 czaouk@mccathernlaw.com

9 Attorneys for Plaintiff,
10 ADAM ALFIA

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **OAKLAND DIVISION**

14 ADAM ALFIA, individually and on	) CASE NO. 4:21-cv-08689-HSG
15 behalf of other persons similarly)
16 situated,	) PLAINTIFF'S MOTION FOR
17	) LEAVE TO FILE A SUR-REPLY
18 Plaintiffs,	) TO DEFENDANT'S REPLY
19 vs.	) REGARDING ITS MOTION TO
20 COINBASE GLOBAL, INC.; and	) COMPEL ARBITRATION AND TO
21 DOES 1 through 50	) STAY THE CASE
22 Defendants.	) Date: April 14, 2022
	) Time: 2:00 p.m.
	) Dept.: 4 th Floor, Courtroom 2
)
	) Complaint Filed: November 8, 2021
	) Trial Date: None
)

24
25 ///

26 ///

27 ///

1 Plaintiff, Adam Alfia, individually and on behalf of other persons similarly
2 situated, (“Alfia” or “Plaintiff”) respectfully move this Court for leave to file a Sur-
3 reply in response to Coinbase’s (“Coinbase” or “Defendant”) Reply papers submitted
4 in regards to its Motion to Compel Arbitration. New facts have developed since
5 Defendant filed its Reply on February 11, 2022. This, coupled with the arguments
6 made in Defendant’s Reply regarding unconscionability and the 2019 User
7 Agreement, should allow Plaintiff to file a Sur-reply of not more than five pages.
8

9
10 A district court may allow a sur-reply to be filed, but only “where a valid
11 reason for such additional briefing exists, such as where the movant raises new
12 arguments in its reply brief.” *Hill v. England*, WL 3031136 at *1 (E.D. Cal. 2005).
13 District courts have the discretion to either permit or preclude a sur-reply.
14
15 *Garcia v. Biter*, 195 F.Supp.3d 1131, 1134 (E.D. Cal. 2016).
16

17 Plaintiff satisfy this requirement. In its Reply, Defendant’s argue that the
18 delegation clause and the arbitration provision itself are not unconscionable because
19 Mr. Alfia “had a meaningful choice to use other exchanges or forgo digital currency
20 trading altogether. [Dkt. 23, p. 10:3-4]. New facts that have come to light within the
21 last week of this filing that show otherwise. Plaintiff intends to submit multiple
22 declarations from a Coinbase consumers who are being required to “consent” to and
23 “Updated User Agreement” and when they decline to do so, the consumers are locked
24 out of their accounts and cannot get back in until they consent. These consumers
25
26
27

1 have cryptocurrency (money) in their Coinbase accounts and are being locked out of
2 their accounts until they consent to an “Updated User Agreement”.

3
4 These consumers cannot just go to another exchange or forgo digital currency
5 because their money is in their Coinbase accounts. These consumers have no choice.
6 It is unconscionable and improper for Defendant to require a consumer to leave their
7 money placed in their Coinbase account and go somewhere else, unless they consent
8 to an “Updated User Agreement”. Coinbase has turned its purported arbitration
9 agreement in its “Updated User Agreement” in a contract of adhesion, a type of “take
10 it or leave it” contract.
11

12
13 A contract of adhesion is defined as “a standardized contract, imposed upon
14 the subscribing party without an opportunity to negotiate the terms.” *Flores v.*
15 *Transamerica Homefirst, Inc.*, 93 Cal.App.4th 846, 853. A finding of a contract of
16 adhesion is essentially a finding of procedural unconscionability.” *Id.*; *Circuit City*
17 *Stores, Inc. v. Adams*, 279 F.3d 889, 893 (9th Cir.2002).
18

19
20 Second, in Defendant’s Reply it argues that both the 2017 and 2019 User
21 Agreements compel Mr. Alfia to arbitrate. If true, why is Coinbase asking its
22 consumers to consent to an “Updated User Agreement” with an arbitration provision?
23

24 ///

25 ///

26 ///

1 For these reasons, Plaintiff respectfully requests leave to file a Sur-reply of no
2 more than five page.
3
4

5 Date: March 22, 2022

McCATHERN, LLP

7 By: /s/ Evan Selik
8 Evan Selik
9 Christine Zaouk
10 Attorneys for Plaintiffs,
ADAM ALFIA
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

McCATHERN LLP
523 West Sixth Street, Suite 830
Los Angeles, CA 90014
(213) 225-6150

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is at McCathern LLP, 523 West Sixth Street, Suite 830, Los Angeles, California 90014. My email address is KAnderson@mccathernlaw.com.

On March 22, 2022, I served the foregoing document described as **PLAINTIFF'S MOTION FOR LEAVE TO FILE A SUR-REPLY TO DEFENDANT'S REPLY REGARDING ITS MOTION TO COMPEL ARBITRATION AND TO STAY THE CASE** on all parties and/or their attorney(s) of record to this action by placing a true copy thereof in a sealed envelope as follows:

KEKER, VAN NEST & PETERS LLP
STEVEN P. RAGLAND - # 221076
sragland@keker.com
ERIN E. MEYER - # 274244
emeyer@keker.com
JACQUIE P. ANDREANO - # 338354
jandreano@keker.com
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Attorneys for Defendant
COINBASE GLOBAL, INC.

[XX] **BY INTERNET/ELECTRONIC MAIL** I caused to be transmitted a copy of the foregoing document(s) this date via internet/electronic mail for service on all parties in this case via their e-mail addresses due to the Coronavirus (Covid-19) pandemic. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

State I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed on March 22, 2022, at Los Angeles, California.

Krishna Anderson

/s/Krishna Anderson
(Signature)